

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHELLEY L. DIMARTINI,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No.: 3:15-cv-00997-GPC-JMA

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

[ECF Nos. 13, 14]

INTRODUCTION

Plaintiff Shelley L. Dimartini ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying Plaintiff's application for supplemental security income ("SSI") benefits under Title XVI of the Social Security Act. (Pl.'s Mot. Summ. J. ("Pl. Mot."), ECF No. 13.) Plaintiff requests the Court to reverse the Commissioner's final decision and order the payment of benefits, or in the alternative, remand the decision to the Social Security Administration for a new hearing. (*Id.* 1.) Plaintiff and the Commissioner have filed a Motion and Cross-Motion for Summary Judgment, respectively. (Pl. Mot., ECF No. 13; Def.'s Cross Mot. Summ. J. ("Def. Mot."), ECF No. 14.) For the reasons discussed below, the Court

DENIES Plaintiff's Motion for Summary Judgment and **GRANTS** Defendant's Cross-Motion for Summary Judgment.

PROCEDURAL BACKGROUND¹

On March 25, 2011, Plaintiff filed an application for SSI benefits alleging disability beginning March 20, 2011² due to “[b]ack, arm, shoulders, arthritis, depression, anxiety, insomnia, and high cholesterol.” (Administrative Record (“AR”) 113, ECF No. 10-4.)³ The claim was denied on July 22, 2011, (*id.*) and upon reconsideration on April 27, 2012. (*Id.* 126). On July 25, 2013, Plaintiff appeared with counsel and testified at a hearing in San Diego, California. (*Id.* 27-70.) On August 5, 2013, the ALJ determined that Plaintiff has not been under a disability since her application was filed and was therefore not entitled to SSI benefits. (*Id.* 9-16.) On September 17, 2013, Plaintiff requested review of the ALJ’s decision by the Appeals Council. (*Id.* 5.) The Appeals Council denied review on March 10, 2015, rendering the ALJ’s decision the final decision of the Commissioner. (*Id.* 1.)

On May 5, 2015, Plaintiff filed a Complaint seeking review of the Commissioner's final decision denying her application for SSI benefits. (Compl., ECF No. 1.) On August 18, 2015, the Commissioner filed an Answer to the Complaint. (Answer, ECF No. 9.) On October 22, 2015, Plaintiff filed a Motion for Summary Judgment, (Pl. Mot., ECF No. 13) and Defendant filed a Cross-Motion for Summary Judgment on November 23, 2015 (Def. Mot., ECF No. 14). Neither party filed an opposition. On August 18, 2015, the matter was referred to the Magistrate Judge for a Report and Recommendation (“R&R”). (R&R, ECF No. 11.) However, this Court has decided to address the matter without an

¹ Prior to this case, Plaintiff has brought six disability claims; two of these claims have gone to hearing level. (AR 126, ECF No. 10-4.)

² Although Plaintiff originally alleged disability beginning July 25, 2003, Plaintiff amended the alleged onset date to the protected filing date of March 20, 2011. (AR 30, ECF No. 10-2.)

³ The Court cites to the ALJ’s decision because the application for disability benefits in the administrative record is one for disability insurance benefits dated May 13, 2011, not an application for supplemental security income benefits dated March 25, 2011. (AR 173-81, ECF No. 10-5.)

1 R&R.

2 **FACTUAL BACKGROUND**

3 Plaintiff, a current resident of Carlsbad, California, was born on June 25, 1950 and
 4 was 63 years old at the time of the hearing. (AR 308, ECF No. 10-7.) She is a college
 5 graduate with some coursework towards a Master's degree. (AR 31-32, ECF No. 10-2.)
 6 Plaintiff's last relevant job was as a music teacher in 2003.⁴ (*Id.* 16.) Plaintiff stopped
 7 working allegedly due to an injury to her back in July 2003, when an approximately 80
 8 pound amplifier was dropped on her back. (*Id.* 54.) Plaintiff testified that she is unable to
 9 work because she cannot bend, lift, stoop, point to the music, carry a suitcase full of
 10 music, or drive to students' houses. (*Id.* 32.) She claims that these limitations, when
 11 combined with her anxiety, inability to concentrate, and depression, keep her from being
 12 able to meet the physical and mental demands of her prior job as a music teacher. (*Id.* 32,
 13 34, 36.)

14 **I. Medical Evidence**

15 **A. Plaintiff's Physical Impairments**

16 Between January 10, 2011 and June 4, 2013, Plaintiff received medical treatment
 17 at Neighborhood Healthcare from Dr. Margaret Chen. (AR 284-300, 311-342, 375-398,
 18 ECF No. 10-7.) Dr. Chen primarily treated Plaintiff's lower back pain, and regularly
 19 refilled Plaintiff's prescription medication. (*Id.*) In all of Plaintiff's records, Dr. Chen
 20 noted that Plaintiff's general appearance was well-developed and well-nourished, and
 21 that Plaintiff was in no acute distress. (*Id.*) On May 5, 2011, Plaintiff reported that she
 22 had completely taken herself off of Seroquel, and while she was not sleeping very well,
 23 she was satisfied with her overall condition. (*Id.* 335.) On April 2, 2012, Dr. Chen
 24 suggested epidural injections for Plaintiff's lower back pain. (*Id.* 397-98.) On October 2,
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26
 27 ⁴ Although Plaintiff has identified her previous job as a piano teacher, the Vocational Expert
 28 classifies Plaintiff's previous job as a music teacher under the Dictionary of Occupational Titles. (AR
 38, ECF No. 10-2.)

1 2012, Plaintiff reported being glad to be off of Seroquel because she felt like she was “in
2 a coma while on it.” (*Id.* 389.) Plaintiff also reported that she was more active and doing
3 yoga, but that her back pain was “a bit more of an issue.” (*Id.*) Starting January 17, 2013,
4 Plaintiff stopped reporting having back pains. (*Id.* 381.) On June 4, 2013, Dr. Chen noted
5 in her review of symptoms that Plaintiff denied being in pain. (*Id.* 375.)

6 On July 22, 2011, State Agency medical consultant Dr. Hartman determined that
7 Plaintiff was restricted to lifting and carrying twenty pounds occasionally and ten pounds
8 frequently. (AR 95, ECF No. 10-3.) He determined that Plaintiff could stand, walk, and
9 sit for six hours in an eight-hour workday. (*Id.* 96.) He placed no restrictions on how
10 much Plaintiff could push or pull, and placed no postural restrictions. (*Id.*)

11 On April 11, 2012, Plaintiff underwent an orthopedic evaluation with Dr. Vincente
12 Bernabe at the request of the Department of Social Services. (AR 355-360, ECF No. 10-
13 7.) Dr. Bernabe found that Plaintiff had mild degenerative disc disease of the lumbar
14 spine and musculoligamentous strain of the thoracolumbar spine. (*Id.* 359.) Nonetheless,
15 he concluded that these findings presented only “a very mild disability” to Plaintiff. (*Id.*)
16 Dr. Bernabe restricted Plaintiff to walking or standing six hours out of an eight hour day
17 and lifting and carrying fifty pounds occasionally and twenty-five pounds frequently. (*Id.*
18 360.) He placed no restrictions on how much Plaintiff could push or pull, or on the
19 amount of time she could sit. (*Id.*) He also placed no postural restrictions, such as
20 bending, kneeling, crawling, crouching, and stooping. (*Id.*)

21 **B. Plaintiff’s Mental Impairments**

22 Between December 9, 2010 and May 23, 2013, Plaintiff received mental care at
23 North Coastal Mental Health from psychiatrist Dr. John Donnelly. (AR 279-283, 361-
24 374, ECF No. 10-6.) On May 22, 2012, Plaintiff reported that taking Remeron helped her
25 calm down, but gave conflicting reports; she stated that she did not feel sedated but also
26 that “she was falling into walls because it left her sedated.” (*Id.* 373.) Plaintiff stated that
27 her mood was “ok,” but claimed that she was stressed and had difficulties with
28 concentration and following through on tasks. (*Id.* 373-374.) Dr. Donnelly noted that

1 Plaintiff's inability to focus may be signs of ADHD. (*Id.* 374.) On August 31, 2012,
2 Plaintiff reported that she gets about five to six hours of sleep with the use of Ambien,
3 and that her energy level, mood, and concentration have improved. (*Id.* 369.) On
4 November 9, 2012, Plaintiff complained of receiving harassing letters from "that creep,"
5 which were causing her anxiety. (*Id.* 367.) She also complained of low energy levels
6 from insomnia. (*Id.*) Plaintiff reported that she did yoga and spent her days doing tasks
7 such as reading, watching television, and doing her nails. (*Id.*) Plaintiff also expressed
8 interest in starting to "volunteer to play piano at places," but that transportation was
9 limited. (*Id.*) On January 3, 2013, Plaintiff reported that she does not feel like going out
10 most of the time, and expressed a desire to become more socially active in the coming
11 year. (*Id.* 365.) She stated that her appetite and energy level were "ok," and that her
12 concentration was getting better. (*Id.*) Dr. Donnelly described Plaintiff's state as a
13 "continued sense of unhappiness," and discussed the option of seeing a therapist. (*Id.*
14 366.) On April 4, 2013, Plaintiff reported that she started seeing a therapist, and that her
15 mood was "ok." (*Id.* 363.) On May 23, 2013, Plaintiff reported that her therapist left the
16 clinic and requested to see another therapist. (*Id.* 361-362.) Plaintiff stated that she had
17 some element of depression, but that it was not as severe as it was in the past. (*Id.* 361.)
18 In almost all progress notes, Dr. Donnelly noted that Plaintiff was alert, attentive, calm,
19 cooperative, made direct eye contact, had fine grooming, and had coherent and organized
20 speech, but that her affect was restricted. (*Id.* 280, 361, 363, 365, 368, 369, 371, 373.) He
21 also noted throughout his reports that Plaintiff's depression was recurrent and in partial
22 remission, and that her alcohol and cocaine dependence were on full sustained remission.
23 (*Id.*) In all his notes, Dr. Donnelly diagnosed Plaintiff with a Global Assessment of
24 Functioning (GAF) of 50.⁵ (*Id.* 281, 362, 364, 366, 368, 370, 372, 374.)

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27 ⁵ "'A GAF score is a rough estimate of an individual's psychological, social, and occupational
28 functioning used to reflect the individual's need for treatment.' [citations omitted] According to the
DSM-IV, a GAF score between 41 and 50 describes 'serious symptoms' or 'any serious impairment in
social, occupational, or school functioning.' A GAF score between 51 to 60 describes 'moderate

On March 27, 2012, Plaintiff received a medical status examination at Scripps Memorial Hospital from psychiatrist Dr. Jaga Nath Glassman at the request of the Department of Social Services. (AR 349-53, ECF No. 10-7.) Dr. Glassman noted that Plaintiff arrived on time to her appointment, appeared well-developed and well-nourished, was mildly unkempt in her physical presentation, had clothes that appeared clean, and had “nice makeup” on, including fingernail and toenail polish. (*Id.* 351-352.) Dr. Glassman also noted that Plaintiff was “well-engaged with the examiner, making and maintaining good eye contact,” and was “cooperative, polite, and respectful in her attitude and demeanor.” (*Id.* 352.) Further, he observed that Plaintiff’s mood was generally “sour” and depressed with limited range in affect, but that her thought processes were “coherent, relevant, and goal-directed,” with “no evidence of any psychotic symptoms.” (*Id.*) Dr. Glassman determined that Plaintiff was able to follow all instructions, had socially appropriate behavior, presented “average to above-average intellectual functioning,” was “alert and oriented,” performed well on formal memory and concentration testing, and performed math calculations correctly. (*Id.*) Dr. Glassman diagnosed Plaintiff with: (1) “Pain Disorder with Medical and Psychological Factors. Dysthymic Disorder”; (2) “Dysfunctional Personality Features, Probably Borderline Personality Disorder”; and (3) “Musculoskeletal/Orthopedic Problems.” (*Id.*) He rated Plaintiff’s GAF at 60, and noted that Plaintiff had mild limitations in her capacity to maintain concentration, persistence, and pace, and in adapting to changes and stresses in a workplace setting. (*Id.* 353.) However, he noted that despite these limitations, Plaintiff was capable of behaving in a socially-appropriate manner, getting along adequately with others, and understanding and following simple and complex instructions. (*Id.*)

On July 22, 2011 and April 24, 2012, State Agency psychological consultants, Dr. Skopec and Dr. Goosby performed case analyses on Plaintiff’s medically determinable

symptoms’ or any moderate difficulty in social, occupational, or school functioning.” *Garrison v. Colvin*, 759 F.3d 995, 1003 n.4 (9th Cir. 2014).

1 impairments and severity. (AR 94, 108, ECF No. 10-3.) They described Plaintiff as
2 having mild limitations in activities of daily living, in social functioning, in
3 concentration, persistence, or pace, and as having no episodes of decompensation. (*Id.*)
4 Dr. Goosby noted that Plaintiff's mental impairments cause "no more than mild
5 limitations." (*Id.* 108.)

6 **II. Vocational Expert Testimony**

7 Vocational expert ("VE") Mark Remas testified that Plaintiff's past work as a
8 music teacher is a "skilled" and "light work," as described in the Dictionary of
9 Occupational Titles ("DOT"). (AR 37-38, ECF No. 10-2.) The ALJ asked the VE five
10 hypothetical questions geared towards exploring various physical and mental restrictions
11 and their effects on Plaintiff's ability to perform her past relevant work. (*Id.* 38-42.)

12 In response to the first hypothetical, the VE testified that a person with the
13 following limitations could still work as a music teacher: a person who can lift and carry
14 twenty pounds occasionally and ten pounds frequently; can stand or walk six hours in an
15 eight hour day or sit six hours in an eight hour day; has difficulty with attention and
16 concentration but can concentrate for two hour segments; and has trouble with attendance
17 and punctuality such that she has difficulty completing a normal workday or workweek,
18 but does not miss work more than one day per month. (*Id.* 38.)

19 In response to the second hypothetical, the VE testified that a person with the
20 following limitations could still work as a music teacher: a person who has the limitations
21 of the first hypothetical; has difficulty in handling workplace stress; and is limited to
22 occasional stooping, crouching, kneeling, crawling, or climbing stairs. (*Id.* 38-39.)

23 In response to the third hypothetical, the VE testified that a person with the
24 following limitations could not work as a music teacher: a person who has the limitations
25 of the second hypothetical; can lift and carry ten pounds occasionally and ten or less
26 frequently; and stand or walk two to four hours in an eight hour day. (*Id.* 39.) However,
27 the VE clarified that the DOT's definition of a music teacher includes all levels of
28 teachers as well as all instruments, and that a piano teacher would still be able to continue

1 her work in a piano studio or have students come to them. (*Id.*)

2 In response to the fourth hypothetical, the VE testified that a person with the
3 following limitations could not work as a music teacher: a person who has the limitations
4 of the third hypothetical; can lift and carry five pounds occasionally or frequently; and sit
5 four hours out of an eight hour day. (*Id.* 40.)

6 In response to the fifth hypothetical, the VE testified that a person with the
7 following limitations could not work as a music teacher: a person who has the limitations
8 of the second hypothetical; has trouble with attention and concentrating for two hour
9 segments; and has greater problems with attendance and punctuality, causing her to be
10 absent two to three days per month. (*Id.* 41.)

11 **III. The ALJ's Decision**

12 For purposes of the Social Security Act, a claimant is disabled if she is unable "to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which has
15 lasted or can be expected to last for a continuous period of not less than 12 months." 42
16 U.S.C. § 423(d)(1)(A). In order to determine whether a claimant meets this definition, the
17 ALJ employs a five-step sequential evaluation. 20 C.F.R. § 416.920(a); *Molina v. Astrue*,
18 674 F.3d 1104, 1110 (9th Cir. 2012). If the ALJ determines that a claimant is either
19 disabled or not disabled at any step in the process, the ALJ does not continue on to the
20 next step. *See* 20 C.F.R. § 416.920(a)(4); *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d
21 1219, 1222 (9th Cir. 2009). In brief, the ALJ considers whether a claimant is disabled by
22 determining: (1) whether the claimant is "doing substantial gainful activity"; (2) whether
23 the claimant has a "severe medically determinable physical or mental impairment" or
24 combination of impairments that has lasted for more than 12 months; (3) whether the
25 impairment "meets or equals" one of the listings in the regulations; (4) whether, given the
26 claimant's residual functional capacity ("RFC"), the claimant can still do his or her "past
27 relevant work"; and (5) whether the claimant "can make an adjustment to other work." 20
28 C.F.R. § 416.920(a). Between steps three and four, the ALJ must, as an intermediate step,

1 assess the claimant's RFC. *See* 20 C.F.R. § 416.920(e); *Bray*, 554 F.3d at 1222-23. The
 2 burden of proof is on the claimant at steps one through four, but shifts to the
 3 Commissioner at step five. *Bray*, 554 F.3d at 1222.

4 The ALJ applied the five-step sequential framework to determine that Plaintiff is
 5 not disabled. (AR 11-16, ECF No. 10-2.) At step one, the ALJ found that Plaintiff has not
 6 engaged in substantial gainful activity since March 25, 2011, the date of her application
 7 for SSI benefits. (*Id.* 11.) At step two, the ALJ found that Plaintiff has severe physical
 8 impairments of lumbar spine degenerative disc disease and strain, but non-severe mental
 9 impairments of pain disorder with medical and psychological factors, dysthymic disorder,
 10 and borderline personality disorder.⁶ (*Id.*) At step three, the ALJ found that Plaintiff's
 11 impairments either singly or combined does not meet or equal the severity of one of the
 12 impairments listed in 20 C.F.R. Part 404, Subpart. P, Appendix 1. (*Id.*) At step four, the
 13 ALJ determined that Plaintiff has the RFC to perform light work as defined in 20 C.F.R.
 14 § 416.967(b),⁷ including the capacity to perform occasional postural activities. (*Id.* 13.)
 15 Given Plaintiff's RFC, the ALJ determined that Plaintiff is capable of performing her past
 16 relevant work as a music teacher, which "does not require the performance of work-
 17 related activities precluded by the claimant's residual functional capacity." (*Id.* 16.)
 18 Therefore, the ALJ concluded that Plaintiff has not been under a disability as defined in
 19 the Social Security Act, since March 25, 2011. (*Id.*)

20 LEGAL STANDARD

21 A district court has jurisdiction to review final decisions of the Commissioner of
 22 Social Security. 42 U.S.C. § 405(g). Section 405(g) permits the court to enter a judgment
 23

24 ⁶ The ALJ determined that Plaintiff's medically determinable mental impairments are non-severe
 25 because they cause no more than "mild" limitation in the first three functional areas of activities of daily
 26 living, social functioning, and concentration, persistence or pace, and "no" episodes of decompensation
 in the fourth functional area. *See* 20 C.F.R. § 416.920a(d)(1). (AR 12, ECF No. 10-2.)

27 ⁷ "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying
 28 of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this
 category when it requires a good deal of walking or standing, or when it involves sitting most of the time
 with some pushing and pulling of arm or leg controls." 20 C.F.R. § 416.967(b).

1 affirming, modifying, or reversing the Commissioner's final decision. *Id.* The matter may
 2 also be remanded to the Commissioner for further proceedings. *Id.* The scope of judicial
 3 review is limited, and the Commissioner's final decision should not be disturbed unless it
 4 is "not supported by substantial evidence or it is based on legal error." *Burch v. Barnhart*,
 5 400 F.3d 676, 679 (9th Cir. 2005) (internal quotations and citations omitted). Substantial
 6 evidence means "such relevant evidence as a reasonable mind might accept as adequate
 7 to support a conclusion." *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th
 8 Cir. 2009) (internal quotations and citations omitted). The evidence must be "more than a
 9 mere scintilla," but may be less than a preponderance. *Id.* Even when the evidence is
 10 susceptible to more than one rational interpretation, the court must uphold the ALJ's
 11 findings if they are supported by inferences reasonably drawn from the record.
 12 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).

13 DISCUSSION

14 Plaintiff argues that the final decision by the Commissioner is not supported by
 15 substantial evidence and is erroneous as a matter of law for two reasons: (1) the ALJ
 16 failed to properly evaluate Plaintiff's RFC by failing to include the mental limitations that
 17 he found; and (2) the ALJ erroneously determined that Plaintiff was capable of
 18 performing her past relevant work. (Pl. Mem., ECF No. 13-1.)

19 I. The ALJ Properly Evaluated Plaintiff's RFC

20 The RFC is the most a claimant can still do despite any physical or mental
 21 limitations that affect her ability to perform work-related tasks. 20 C.F.R.
 22 § 416.945(a)(1). If the claimant has more than one impairment, the ALJ must consider all
 23 of the claimant's medically determinable impairments of which the ALJ is aware,
 24 including the claimant's medically determinable impairments that are non-severe, as
 25 explained in §§ 416.920(c), 416.921, and 416.923. *Id.* § 404.945(a)(2). *See also Burch*,
 26 400 F.3d at 683 ("In assessing RFC, the adjudicator must consider only limitations and
 27 restrictions imposed by all of an individual's impairments, even those that are not
 28 "severe.") (citing to Social Security Ruling 96-8p (1996)); *Hutton v. Astrue*, 491 F. App'x

1 850, 850 (9th Cir. 2012) (finding that the ALJ erred by not considering the claimant's
2 non-severe medically determinative impairment). The RFC assessment is "based on all of
3 the relevant medical and other evidence." 20 C.F.R. § 404.945(a)(3). The ALJ must
4 consider "statements about what the claimant can still do that have been provided by
5 medical sources, whether or not they are based on formal medical examinations." *Id.* The
6 ALJ will also consider descriptions and observations of the claimant's limitations from
7 her impairment(s). *Id.* The court must affirm the ALJ's determination of the claimant's
8 RFC if the ALJ applied the proper legal standards and the decision is supported by
9 substantial evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

10 Plaintiff does not dispute the ALJ's RFC assessment of her physical limitations.
11 Rather, Plaintiff relies on *Hutton v. Astrue* to argue that the ALJ made a legal error by
12 failing to include Plaintiff's mild mental limitations in the RFC as reported by Dr.
13 Skopec, Dr. Goosby, and Dr. Glassman. (Pl. Mem. 3-4, ECF No. 13-1.) The
14 Commissioner responds that the ALJ properly considered Plaintiff's non-severe mental
15 impairments, and thus did not commit legal error. (Def. Mem. 7, ECF No. 14-1.)

16 Contrary to the findings in *Hutton* that the ALJ failed to consider the claimant's
17 non-severe medically determinative impairments, the Court finds that the ALJ properly
18 accounted for Plaintiff's non-severe mental limitations in the RFC, in accordance with
19 the medical evidence in the record. *See Hutton*, 491 F. App'x at 850. The ALJ considered
20 the records of psychological consultants Dr. Skopec and Dr. Goosby to determine that
21 Plaintiff's mental impairments cause no more than mild limitations, and found these
22 records consistent with those of psychiatrist Dr. Glassman. (AR 14, ECF No. 10-2.) The
23 ALJ included Dr. Glassman's findings, that despite Plaintiff's mild limitations in
24 concentration, persistence, and pace, Plaintiff was alert and oriented, performed well on
25 formal memory and concentration tests, and performed math calculations correctly. (*Id.*
26 14-15.) The ALJ accounted for Dr. Glassman's findings that, despite Plaintiff's mild
27 limitation in adapting to changes and stress in the workplace, Plaintiff still retained the
28 capacity to behave in a socially appropriate manner, get along adequately with others,

1 and make good eye contact. (*Id.* 14.) The ALJ also considered the results from Plaintiff's
2 mental examination with Dr. Donnelly, finding that Plaintiff had good engagement, was
3 cooperative, and exhibited socially appropriate behavior. (*Id.* 14-15.) In determining that
4 Plaintiff's activities of daily living "are not limited to the extent one would expect," the
5 ALJ considered Dr. Donnelly's notes of Plaintiff's daily activities consisting of shopping
6 in stores, running errands, doing yoga, visiting with family, reading, doing her nails,
7 considering volunteering to play piano, and riding the bus. (*Id.* 15.) The ALJ accounted
8 for Plaintiff's depression and substance abuse from Dr. Donnelly's records, finding that
9 Plaintiff's depression is in partial remission and her substance abuse in full sustained
10 remission. (*Id.*) The ALJ also considered Dr. Donnelly's medical notes that despite
11 Plaintiff's "restricted affect, she was nonetheless alert, oriented, attentive, cooperative,
12 made direct eye contact, had relevant, coherent, organized speech, no psychotic
13 symptoms and adequate insight and judgment." (*Id.*)

14 Upon reviewing the ALJ's assessment of the RFC, the Court finds that the ALJ
15 engaged in a sufficient assessment that was consistent with the mental limitations
16 identified in the medical record. *See* 20 C.F.R. § 416.945(a)(2). Accordingly, the Court
17 finds that the ALJ's assessment of Plaintiff's RFC is supported by substantial evidence
18 and is free from material legal error.

19 **II. The ALJ Properly Determined that Plaintiff is Capable of Performing Her**
20 **Past Relevant Work**

21 At step four of the sequential evaluation framework, a claimant has the burden of
22 showing that she can no longer perform her past relevant work. *Clem v. Sullivan*, 894
23 F.2d 328, 330 (9th Cir. 1990). Although the burden of proof lies with the claimant, the
24 ALJ still has a duty to make the requisite factual findings to support his conclusion. *Pinto*
25 *v. Massanari*, 249 F.3d 840, 845 (9th Cir. 2001). This is done by looking at the RFC and
26 the physical and mental demands of the claimant's past relevant work. *Id.* at 844.

1 Plaintiff relies on the VE's response to the ALJ's fifth hypothetical⁸ to argue that
 2 the ALJ erroneously determined that Plaintiff is capable of performing her past relevant
 3 work as a music teacher. (AR 5-8, ECF No. 10-2.) Specifically, Plaintiff asserts that the
 4 VE's response to the fifth hypothetical is a testimony that Plaintiff's "mild limitations in
 5 social functioning and mild limitation in concentration, persistence, or pace" preclude
 6 Plaintiff from performing her past work as a music teacher. (Pl. Mem. 6, ECF No. 13-1.)
 7 The Commissioner argues that Plaintiff's reliance on the VE's testimony is misplaced
 8 because it does not accurately represent Plaintiff's limitations. (Def. Mem. 7, ECF No.
 9 14-1.)

10 Finding above that the ALJ's assessment of Plaintiff's mental limitation in the
 11 RFC was proper, the Court does not find support for Plaintiff's argument that Plaintiff
 12 has the functional restrictions presented in the fifth hypothetical, such as trouble with
 13 attendance and punctuality causing her to be absent two to three days a week, and
 14 difficulty in maintaining attention and concentration causing her to have trouble
 15 concentrating for two hour segments once or twice a week. Rather, the VE's testimony in
 16 response to the ALJ's first and second hypotheticals⁹ support a finding that is consistent
 17 _____

18 ⁸ In response to the ALJ's fifth hypothetical, the VE testified that a person with the following
 19 limitations would not be able to perform Plaintiff's past relevant job as a music teacher: a person who
 20 can lift and carry twenty pounds occasionally and ten pounds frequently; can stand or walk six hours in
 21 an eight hour day or sit six hours in an eight hour day; is limited to occasional stooping, crouching,
 22 kneeling, crawling, or climbing stairs; has trouble with attendance and punctuality such that she would
 23 have difficulty completing a normal workday and workweek, causing her to be absent two to three days
 24 a week; has difficulty in handling workplace stress; and has difficulty in maintaining attention and
 25 concentration such that she would have trouble concentrating for two hour segments once or twice a
 26 week. (AR 41, ECF No. 10-2.)

27 ⁹ In response to the first hypothetical, the VE testified that a person with the following
 28 limitations could work as a music teacher: a person who can lift and carry twenty pounds occasionally
 and ten pounds frequently; can stand or walk six hours in an eight hour day or sit six hours in an eight
 hour day; has difficulty with attention and concentration for longer than two hours; and has trouble with
 attendance and punctuality and completing a normal workday or workweek. (*Id.* 38.)

In response to the second hypothetical, the VE testified that a person with the following
 limitations could work as a music teacher: a person who has the limitations of the first hypothetical; is
 limited to occasional stooping, crouching, kneeling, crawling, or climbing stairs; and has difficulty in
 handling workplace stress. (*Id.* 38-39.)

1 with the medical evidence considered in the RFC. No medical source opined that Plaintiff
2 has any functional restrictions from her mild mental limitations. Plaintiff does not
3 provide, and the record does not contain, any evidence indicating that Plaintiff has any
4 functional restrictions that prevent her from performing her prior job as a music teacher.
5 Therefore, the Court finds that Plaintiff fails to meet her burden of showing that she can
6 no longer perform her past relevant work.

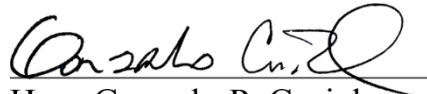
7 The Court finds that there is substantial evidence grounded in the RFC assessment
8 and the VE's testimony that supports the ALJ's conclusion that Plaintiff is able to
9 perform the duties of her past relevant work as a music teacher.

10 CONCLUSION

11 Based on the foregoing review of the relevant law and the administrative record,
12 the Court finds that the Administrative Law Judge applied the correct legal standards
13 when he denied Plaintiff's claim for supplemental security income benefits, and that his
14 conclusions are supported by substantial evidence. Therefore, the Court **DENIES**
15 Plaintiff's Motion for Summary Judgment and **GRANTS** Defendant's Cross-Motion for
16 Summary Judgment. The Clerk of Court shall close the case.

17 IT IS SO ORDERED.

18 Dated: August 4, 2016

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20 Hon. Gonzalo P. Curiel
21 United States District Judge
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